



Comptroller General  
of the United States

24499

Washington, D.C. 20548

## Decision

**Matter of:** Olin Corporation  
**File:** B-258113  
**Date:** September 12, 1994

### DECISION

Olin Ordnance Division of Olin Corporation protests that the specifications in request for proposals (RFP) No. N68936-94-R-0238, issued by the Department of the Navy for production of 25mm PGU-32/U semi-armor piercing high explosive incendiary-tracer rounds, contain a latent defect.

We dismiss the protest as untimely.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals. Protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1994). Further, our Regulations provide that a matter initially protested to the agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206. Here, Olin's initial agency-level protest was filed after the closing time for receipt of proposals and more than 10 days after the protester knew, or should have known, of the basis for its protest.

Olin challenges the Navy's sensitivity specification for the tracer rounds. Under the technical data package (TDP) developed by Raufoss, the Norwegian, original manufacturer of the rounds, the incendiary in the projectile nose of each tracer round was expected to be activated when fired at an aluminum target, 2 millimeters (mm) (0.08 inch) thick at a distance of 200 meters. As part of its "Americanization" of the TDP, the Navy changed the sensitivity specification to require activation when the round is fired at an aluminum target 1mm (0.04 inch) thick at the same distance.

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According to Olin, this change in the sensitivity requirement results in a defective specification because the Navy did not change the round's design to cause it to activate "consistently" when fired at the thinner target.

Olin did not challenge this alleged specification defect until after the closing date for receipt of proposals, but argues that its protest to the agency was timely because it was filed within 10 working days of when Olin learned of the defect. We find this position without merit.

On April 15, 1992, Olin was awarded a contract for the initial development of the 25mm round based on the same "Americanized" TDP which it now challenges. As part of its development effort, Olin received a copy of the Raufoss TDP which contained the thicker target sensitivity specification. One of Olin's tasks was to review the Navy's TDP and propose a production effort based on its configuration without significant modification of the rounds. Proposed variations were to be presented to a design review board. Olin did not discuss the sensitivity requirement with the board. Subsequently, Olin produced and successfully passed a first article test (50 rounds) and acceptance testing of the first lot (20 rounds). Based on these tests, the Navy accepted 30,000 rounds from Olin.

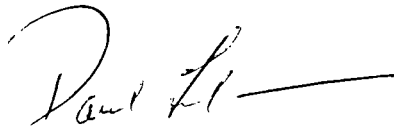
On May 4, 1994, the Navy rejected Olin's second lot of 25,000 rounds because only 13 of 20 rounds passed the acceptance test with respect to sensitivity. The closing date for the current RFP was May 19 and Olin submitted its proposal without challenging the sensitivity specification. On June 8, it received a letter from Raufoss which outlined various technical differences between the Navy and Raufoss TDPs, including the sensitivity specification. Olin filed its protest with the Navy on June 14, within 10 working days of its receipt of the Raufoss letter. In its agency-level protest, Olin indicates that it learned of the defective specification "[t]hrough investigation and testing" and determined that "significant modification" was required before the rounds would "consistently" activate upon being fired through the thinner target specified by the Navy's TDP.

A protest of a latent defect in specifications is timely if filed within 10 working days after the protester discovers the defect. ConDiesel Mobile Equip. Div., B-201568, Sept. 29, 1982, 82-2 CPD ¶ 294. However, here Olin knew, or should have known, of the alleged latent defect well before it filed its protest with the Navy. Olin worked on the initial 25mm round contract and had an opportunity to compare the Raufoss and Navy TDPs more than 2 years before the current procurement. It successfully produced a first article and one lot of ammunition without incident, but knew

it had failed the second lot sensitivity test more than 10 working days before the closing date for receipt of proposals. While Olin claims that it only learned of the Navy's failure to change the round's design when it received the June 8 Raufoss letter, Olin has not identified what information in that letter led it to this conclusion. We have reviewed the letter, which was submitted to our Office by Olin, and find nothing of which Olin should have been unaware, or could not have identified by comparison of the two TDPs. Accordingly, Olin was required to challenge the specification no later than the closing time for receipt of proposals on May 19. Its June 14 protest to the agency was untimely, hence its subsequent protest to our Office was untimely as well.

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

The protest is dismissed.



Paul I. Lieberman  
Assistant General Counsel